

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
BOB LEHMEN dba PERMEATE REFINING, INC. fka XETHANOL REFINING, INC.	NO. 2014-AQ-00
Delaware County, Iowa	

TO: Bob Lehmen
Permeate Refining, Inc.
P.O. Box 9521
Cedar Rapids, Iowa 52409-9521

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

<u>Relating to technical requirements:</u>	<u>Relating to appeal requirements:</u>
Reid Bermel Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone: 515/725-9535	Kelli Book, Attorney for the DNR Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone: 515/725-9572
<u>Appeal, if any, addressed to:</u>	<u>Payment of Penalty to:</u>
Iowa Department of Natural Resources Henry A. Wallace Building 502 East Ninth Street Des Moines, Iowa 50319-0034	Iowa Department of Natural Resources Henry A. Wallace Building 502 East Ninth Street Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

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III. STATEMENT OF FACTS

1. Bob Lehmen dba Permeate Refining, Inc. fka Xethanol Refining, Inc. (Permeate) is an ethanol plant located at 205 Locust Street, S.W., Hopkinton, Iowa.
2. On January 15, 2013, DNR's Air Quality Bureau sent Permeate a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letter included instructions on how to complete and submit the Minor Source Emission Inventory (MSEI) for 2012. The letter also included information on additional assistance for completing the MSEI. The letter informed the facility the MSEI was due May 15, 2013 and stated a failure to meet the deadline could result in further enforcement.
3. On April 20, 2013, DNR sent a postcard to Permeate stating that the facility had not yet submitted the MSEI. The postcard reminded the facility the MSEI was due May 15, 2013. The postcard also included information on assistance for completing the MSEI.
4. On May 15, 2013, the MSEI for facilities in the eastern third of the state were due. Permeate failed to submit its MSEI by this date.
5. On June 3, 2013, DNR issued a noncompliance letter to Permeate for failing to submit its MSEI by May 15, 2013. The letter stated the facility remained out of compliance until the MSEI was submitted and failure to submit the MSEI could result in further enforcement.
6. On July 31, 2013, DNR issued a Notice of Violation letter to Permeate for failing to submit its MSEI by May 15, 2013. The letter stated the MSEI must be submitted by August 16, 2013 and failure to submit the MSEI would result in further enforcement. To date, Permeate has not submitted the MSEI.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEI for Permeate was due May 15, 2013 and

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the facility was informed of this requirement on several occasions. To date, Permeate has failed to submit the MSEI. The above mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Permeate to do the following:

1. Submit the MSEI for its facility within 30 days from receipt of this Order;
2. Pay an administrative penalty of \$1,500.00 within 60 days of receipt of this Order; subject to the appeal rights stated in Section VII; and
3. If the requirement referenced in Paragraph 1 of this section is not completed within 30 days from receipt of this Order, Permeate shall pay a stipulated penalty in the amount of \$500.00 per month for each month the requirement in Paragraph 1 is not completed up to \$8,500.00. The stipulated penalty will be in addition to the administrative penalty assessed in Paragraph 2 of this section.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with an administrative penalty of \$1,500.00 and stipulated penalties for violations of the compliance schedule of this Order.

The stipulated penalties in this Order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to Permeate for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule in this Order is a fairly serious matter. The penalties would also be related to future culpability in that Permeate has been put on notice by this Order that stipulated penalties will result if the compliance schedule is not met. The administrative penalty is as follows.

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Permeate has been able to delay the costs associated with completing the MSEI for its facility. It is estimated that the economic benefit achieved by Permeate is at least \$50.00 and \$50.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient method to resolve this matter. Permeate's failure to timely submit the MSEI prevented the DNR and the public from being aware of the facility compliance status in regard to the rules and regulations. Failing to timely submit the MSEI prevents the DNR from accurately inventorying minor source air pollutants. This violation threatens the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as Permeate. Additionally, the DNR has expended time in notifying the facility of the requirements. Therefore, \$750.00 is assessed for this factor.

Culpability – Permeate has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The facility received at least three reminder letters regarding the submittal of the MSEI. The facility was also provided information as to where it could obtain assistance in completing the MSEI. Based on the above considerations, \$700.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply

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with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.141.

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
March, 2014.

AQB #28-02-003; Kelli Book; Reid Bermel, DNR Field Office 1; VII.C.3

